

Pesticides in Forestry

Issue:

Ex. 5 - Deliberative

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Background:

In EPA and NOAA's 1/13/1998 and 12/20/2013 rationales, the agencies concluded that one of the areas that needed to be addressed in the additional forestry management measures to attain and maintain water quality standards and support beneficial use was the lack of adequate stream buffers from aerial application of herbicides on non-fish bearing streams. In the coastal nonpoint management area, non-fish bearing streams comprise 60-70% of the total stream length. Oregon also does not require riparian buffers for forest harvests on non-fish bearing streams, so trees can be harvested up to the stream banks along non-fish bearing streams. Herbicides applied aerially can be delivered directly into these streams which then enter fish-bearing streams or drinking water supplies, impacting designated uses such as drinking water and salmon habitat, including for endangered and threatened coastal coho and other salmonids.

For aerial application of herbicides on small non-fish bearing streams, Oregon's coastal nonpoint program relies on the State's Pesticide Control Law at ORS 634, OAR 603-57, best management practices set by the ODA, and FIFRA.

The main challenges with Oregon's program in how it manages aerial application of herbicides are:

- 1) The State has protections for fish-bearing streams and drinking water streams. However, there are none for Type N streams where aerial application of herbicides occur.
- 2) There are no riparian buffers for harvesting on Type N streams.

3)

4)

5)

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- 6) The State's program lacks policies (outside of compliance with FIFRA labels with the aforementioned gaps) to protect Type N streams from aerial application of herbicides.
- The State requires notification from applicators for the Type "N" streams on herbicides they *may* apply. However, the State does not know which herbicide the applicator will use to determine compliance with the FIFRA label. There are not state policies in place that the most stringent label may be used.
 - The applicator is required to submit notification plans to the State on the actions it will take to adhere to label requirements. However, the State has no authority to approve or disapprove the notification. A comment letter submitted information on specific herbicides that might be applied all of which restrict applications to water. However, the notification indicated only protections for Type F and Type D waters. There is no information on Type N waters, nor does the state have authority to approve or disapprove the notification.

The comments we received were inconclusive. There were no studies or data on herbicides in non-fish bearing streams in the coastal nonpoint management area. The State also did not offer any new information on policies to protect Type N streams from aerial application of herbicides.

Impact or significance of the issue

Type N streams compose 60-70% of the stream length in the coastal nonpoint management area. There are no required buffers for forest harvests on Type N streams, and in some areas, trees can be harvested up to the stream banks, and herbicides applied aerially can be delivered directly into streams which then enter fish-bearing streams where aquatic life can be harmed. These all eventually flow into fish-bearing streams where listed coastal coho and other fish species live.

Tangentially, local citizens, environmental groups, state agencies, and industry will scrutinize our decision carefully because of ongoing concerns with public health exposure concerns from aerial drift of herbicides in the Triangle Lake area. Also, there continues to be litigation in pesticides on labeling requirements and ESA species and a separate long-term multi-agency workgroup that is attempting to address these issues.

Constraints

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Who is impacted by the issue?

- Aquatic life and/or local landowners adjacent to areas where aerial application of herbicides occur
- EPA Pesticides Program and NMFS working on pesticide risk assessments and litigation

What are the risks of not resolving the issue?

We must take a final action by January 30, 2015 as agreed upon with NWEA.

Recommendations and Next Steps

- The options are to:

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For aerial application of herbicides on small non-fish bearing streams, Oregon's coastal nonpoint program relies on the State's Pesticide Control Law at ORS 634, OAR 603-57, best management practices set by the ODA, and FIFRA.

The main challenges with Oregon's program in how it manages aerial application of herbicides are:

- 1) The State has protections for fish-bearing streams and drinking water streams. However, there are none for Type N streams where aerial application of herbicides occur.
- 2) There are no riparian buffers for harvesting on Type N streams and no buffers in Oregon state regulation that protect Type N streams from aerial application of herbicides.

Comment [AC1]: #1 above covers this.

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- 6) The State's program lacks policies (outside of compliance with FIFRA labels with the aforementioned gaps) to protect Type N streams from aerial application of herbicides.
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Comment [AC3]: As I mentioned before, still need to emphasize that these would be voluntary efforts so OR would need to meet the 3-prong test for voluntary programs: LO, commitment to use back-up authority, etc. While OR has LO in place, our attorneys did not approve the forestry portion of that because if they are implementing the FPA bmps, they are assumed to comply with wqs.

Also, since NOAA/EPA conditioned OR's program that they needed to provide better protection (buffers) around type N streams during arial application of herbicides, at a min, or would need to have voluntary program to promote buffers...I see some of the other stuff as useful recommendations but not necessarily what OR would need to have for approval (if it has good voluntary buffer program, backed by enforceable authorities, a commitment to use that authority, and monitoring and tracking effort it place).

Comment [AC4]: By new issues, do you mean recommended voluntary bmps or something else? Would be helpful to clarify what you mean by "issues."

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